

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

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SO. DIST. OF GA.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

VERNESSA CUNNINGHAM)

Plaintiff,)

v.)

ZWICKER & ASSOCIATES, PC)

Defendant.)

CIVIL ACTION

FILE NO.

CV 410-269

NATURE OF ACTION

1. This is an action brought under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff's action occurred in this district, (where Plaintiff resides in this district), and/or where Defendant transacts business in this district.

PARTIES

4. Plaintiff, Vernessa Cunningham ("Plaintiff"), is a natural person who

at all relevant times resided in the State of Georgia, County of Chatham, and City of Pooler.

5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

6. Defendant, Zwicker & Associates, PC (“Defendant”) is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. §1692a(5).

7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

9. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes. Plaintiff incurred the obligation, or alleged obligation, owed or due, or asserted to be owed or due a creditor other than Defendant.

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or

regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another.

11. Defendant used unfair or unconscionable means against Plaintiff in connection with an attempt to collect a debt.

12. A trial in the case that Defendant had filed against Plaintiff in connection with the underlying debt was scheduled for July 19, 2010.

13. On or about July 7, 2010, Defendant sent to Plaintiff a Motion for Continuance of the Trial which Defendant deliberately did not file with the Court.

14. Plaintiff, a least sophisticated consumer unfamiliar with court proceedings, assumed that the trial in her case was not going forward at the scheduled time as a result of Defendant's Motion.

15. Defendant, however, deliberately did not file the Motion with the Court and instead proceeded to appear in court on July 19th and procured a judgment against the Plaintiff based on her failure to appear at the trial. (§ 1692f).

16. Defendant used false, deceptive, or misleading representations or means in connection with collection of a debt, actions which would have led the least sophisticated consumer and in fact did lead Plaintiff to believe that the trial was not going forward on the scheduled date and time and/or that the documents were legal pleadings when they were not, and/or were not legal pleadings when

they were. (§ 1692e, e(13), e(15)).

17. Defendant failed to disclose the caller's individual identity or Defendant's true corporate or business name in a telephone call to Plaintiff.

18. Defendant failed to notify Plaintiff during each collection contact that the communication was from a debt collector.

19. On multiple occasions, Defendant's collectors made collection calls to the Plaintiff, and either left messages for Plaintiff which did not disclose their identity or the fact that they were calling in an attempt to collect a debt, or simply hung up without leaving any message, and therefore failed to disclose their identity or the fact that they were calling in an attempt to collect a debt (§ 1692d(6)) and (§ 1692e(11)).

20. Defendant's actions constitute conduct highly offensive to a reasonable person, and as a result of Defendant's behavior Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and/or emotional distress.

COUNT I

21. Plaintiff repeats and re-alleges each and every allegation contained above.

22. Defendant violated the FDCPA as detailed above.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the FDCPA;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. §1692k,
in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. §1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in
this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as
may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and
proper.

TRIAL BY JURY

23. Plaintiff is entitled to and hereby demands a trial by jury.

This 8th day of November, 2010.

ATTORNEYS FOR PLAINTFF
VERNESSA CUNNINGHAM

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Southern District of Georgia, using a font type of Time New Roman and a point size of 14.

Respectfully submitted,



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